

PAYMENT OF DUES TO ARMY OFFICERS.

JANUARY 19, 1897.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. AVERY, from the Committee on War Claims, submitted the following

REPORT.

[To accompany S. 2570.]

The Committee on War Claims, to whom was referred the bill (S. 2570) to authorize the readjustment of the accounts of army officers, report that they concur in the conclusions embodied in the report of this committee on House bill 7326 of the present Congress, a copy thereof being hereto attached as a part of this report, and recommend the passage of the bill.

[House Report No. 1016 Fifty-fourth Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 7326) to provide for the restatement, readjustment, settlement, and payment of dues to army officers in certain cases, beg leave to submit the following report:

Your committee have carefully examined said bill, together with all the papers submitted for their consideration.

A bill of a similar character was introduced in the Senate of the United States by Mr. — in the second session of the Fifty-first Congress, which was referred to the Military Committee, and by the chairman of said committee it was referred to the Secretary of the Treasury for comment, and a reply made by the Secretary recommending a substitute prepared by the Second Auditor of the Treasury in words following:

“Be it enacted, etc., That the accounting officers of the Treasury be, and they are hereby, directed, on application being made by claimants or their heirs or legal representative, to reopen accounts or claims settled at any time by said accounting officers, under a construction of law subsequently declared by the Supreme Court of the United States to be erroneous, and all such accounts shall be resettled and adjudicated in accordance with the law applicable thereto as construed by said Supreme Court.”

Such substitute was adopted, and the Military Committee, through Senator Davis, submitted a unanimous favorable report to the Senate.

The occasion of that bill and the propriety and necessity of this (H. R. 7326) is found in the fact that the accounting officers of the Treasury (except those of the Second Auditor's Department) disregarded and entirely ignored the provision of the several acts of Congress in the calculation of longevity allowance to every officer for “every five years he may have served in the Army of the United States.”

Believing that long and continued military service would best insure efficiency in the Army, Congress in its wisdom made an early declaration upon the subject, as will be seen by reference to the act of July 5, 1838 (5 Stat. L., p. 258), in which was offered to the soldier an incentive to long and faithful service, in words following:

“That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States.”

A quibble upon or an evasion of the law on the part of the Comptroller's division,

holding that the service must be in the Regular Army, was resorted to and arbitrarily enforced by the accounting officers in that division of the Treasury until about 1882, when Captain Tyler, who was upon the retired list, in order to test the legality of the accounting officer's ruling in this behalf, brought suit in the Court of Claims for an allowance of his dues that he claimed was unlawfully withheld, and obtained judgment for such amount, which, on appeal by the Government, the Supreme Court affirmed, and held that within the meaning of the acts of Congress the captain was entitled to his longevity allowance, although not in active service, and upon the retired list.

Your committee is advised that in some instances a limited number of claimants were paid by the accounting officers with a show of submission to the decision of the court in the Tyler case, reported in 105 U. S. R., page 244, opened, restated, and a small portion of dues that had been withheld from the officer in violation of law paid, but finally relapsed into their previous disregard of both the letter and spirit of the act of July 5, 1838, and the act of July 15, 1870, now section 1262 of the Revised Statutes, that provides that—

"There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service."

It was then that Captain Morton brought suit against the United States in the Court of Claims for arrears of longevity pay, withheld by an erroneous computation of longevity allowance by the accounting officers in a renewed or resumed violation of the law, where he obtained judgment, which, upon an appeal to the Supreme Court by the Government, was affirmed by that court on October 27, 1884, and reported in 112 U. S. R., page 1.

Your committee also submit that even after the decisions of the Supreme Court, above referred to, a continued refusal by the said accounting officers of the Treasury to yield obedience to the judgment of the court of the last resort, Captain Watson was obliged to resort to suit in the Court of Claims to obtain his longevity dues unlawfully withheld, when, after judgment there, the Government again appealed to the Supreme Court, where, on the 11th of March, 1889, the judgment was affirmed. Mr. Justice Lamar, in delivering the opinion of the court, declared:

"This is the claim of an army officer for credit in computing his longevity with the time of his service as a cadet at West Point.

"The court below entered judgment in favor of the claimant without an opinion for \$126.22.

"The claimant relied on the case of *Morton v. The United States*. (19 C. Cls. R., 200; 112 U. S. R., 1.) The decision of the court below is affirmed on the ground that the time of service of the cadet in the Military Academy at West Point is to be regarded as a part of the time to be served in the Army within the meaning of the act of July 5, 1838 (5 Stat. L., 258), and should be counted in computing his longevity pay.

"We are of the opinion that such service should be reckoned in computing longevity pay prior as well as subsequent to the act of February 24, 1881." (130 U. S. R., p. 80.)

It is also true, and your committee so report, that, in obedience to the law as thus interpreted and declared by the Supreme Court, Second Auditor Day, certified to Comptroller Butler the cases of Gen. U. S. Grant, Gen. W. S. Rosecrans, cases identical in principle with Captains Morton and Watson, and to such as this bill (H. R. 7326) seeks to benefit, and which were proved, passed, and paid, justified by an able and lengthy opinion by Comptroller Butler.

It may be added that Comptroller Butler's successor allowed, passed, and paid that of Gen. Judson Kilpatrick, but refused to honor the certificates of all others of like character certified and sent to him of the same class by Second Auditor Day, which makes legislation necessary to all persons having like claims and demands, since which several private bills of officers have been passed by Congress and approved by the President, after which other private bills were introduced and favorable reports made upon the question involved here by Senator Davis and Senator Palmer, from the Senate, Mr. Bunn, of the House Committee on Claims, as well as by the Military Committee of the House of Representatives in the last Congress, and still later Report No. 754 upon Senate bill 2297, in principle identical with H. R. 7326, by Senator Davis in the following terse language:

"This is a bill involving certain legal questions already adjudicated by the courts. The persons whose names are incorporated in the bill are entitled to the relief sought by reason of such decisions."

The bill upon which the foregoing report was made was Senate bill 2297, and was entitled the same as bill 7326, which was referred to the Military Committee of the Senate August 9, 1894, and by the committee to the Secretary of War for information

relative to the measure August 13, 1894, and the following reply received October 9, 1894:

HEADQUARTERS OF THE ARMY,
Washington, October 9, 1894.

It would seem clear that the action of the Government should be uniform and impartial in the application of the general principles to all the officers of the Army, and hence, that Congress having recognized the rights of certain officers to increase compensation in consequence of length of service, which right had theretofore been denied by the Treasury Department, the same rule of equity should be applied to all other officers similarly circumstanced.

As Acting Secretary of War I referred this matter to the Pay Department for a report in order that the Secretary of War and the committee in Congress to which this matter may be referred might have full information respecting the sums of money that may be involved in a measure of impartial justice herein proposed.

Paymaster-General Smith, in answer to a reference of the subject to him, says:

"There seems to be no valid reason why such service should not 'be reckoned in computing longevity pay prior as well as subsequent to the act of February 24, 1881.'" (U. S. Reports 130, p. 85.)

This report is now respectfully submitted to the Secretary of War for his action.

JOHN M. SCHOFIELD,
Major-General, Commander.

Respectfully returned to the chairman of the Committee on Military Affairs, United States Senate, inviting attention to the preceding indorsements and to the papers therein referred to.

DANIEL S. LAMONT.

WAR DEPARTMENT, *December 6, 1894.*

In view of the facts hereinbefore set forth your committee report back the bill 7326 with a recommendation that it do pass.

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